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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 E. JEAN CARROLL,

4 Plaintiff,

5 v.

20 CV 7311 (LAK)  
Trial

6 DONALD J. TRUMP, in his  
7 personal capacity,

8 Defendant.

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9 New York, N.Y.  
10 January 22, 2024  
10:00 a.m.

11 Before:

12 HON. LEWIS A. KAPLAN,

13 District Judge  
14 -and a jury-

14 APPEARANCES

15 KAPLAN HECKER & FINK LLP  
Attorneys for Plaintiff  
16 BY: ROBERTA ANN KAPLAN  
SHAWN G. CROWLEY  
17 MATTHEW J. CRAIG

18 HABBA MADAIIO & ASSOCIATES LLP  
Attorneys for Defendant  
19 BY: ALINA HABBA  
MICHAEL T. MADAIIO  
20 PETER SWIFT  
21 PETER GABRA

01MQcarF

1 (Trial continued.; jury not present)

2 THE COURT: Good morning everyone.

3 The juror in seat number 3 reported to Andy early this  
4 morning on the way to the City, he was feeling hot and  
5 nauseous. So I sent him home for the day with instructions to  
6 get a Covid test and report back. The rest of the jury is  
7 here.

8 It was reported to me that Ms. Habba reported to Andy  
9 that she was not feeling well. I think I understood that you  
10 said, Ms. Habba, that one or both of your parents had Covid.  
11 Is that right?

12 MS. HABBA: Yes, your Honor.

13 THE COURT: What contact did you have with them in the  
14 last five days?

15 MS. HABBA: I saw them three days ago.

16 THE COURT: For how long?

17 MS. HABBA: The duration of a dinner, a few hours.

18 THE COURT: Okay. And was Mr. Madaio also exposed?

19 MS. HABBA: He was with me, obviously.

20 MR. MADAIIO: I was exposed to Ms. Habba.

21 THE COURT: Okay. And so Ms. Habba and Mr. Madaio  
22 kindly agreed to take a Covid test this morning, and it's  
23 reported to me that they were both negative.

24 Now, I will hear counsel on what they wish to do with  
25 respect to proceeding or not proceeding today without

01MQcarF

1 Juror No. 3. If we proceed without him, he, of course, is  
2 excused.

3 Ms. Kaplan.

4 MS. KAPLAN: On behalf of plaintiff, your Honor, we're  
5 prepared and would like to proceed.

6 THE COURT: Ms. Habba?

7 MS. HABBA: Your Honor, at this point, given that I  
8 also have exhibited a fever over the last 48 hours, I did let  
9 counsel know as a courtesy to their client, as well as  
10 Mr. Madaio. My babysitter informed me this morning that she  
11 was not teaching. She also is exhibiting symptoms.

12 I don't see the problem with a short delay for a day.  
13 I don't think it will prejudice anyone. At least we can get  
14 the juror's Covid test as well, just so everybody is focused.  
15 I think it will be better. We have nine jurors. I would like  
16 to have the full panel, please.

17 THE COURT: All right. We will continue until -- that  
18 is, continue the trial until tomorrow morning at 9:30. We will  
19 set up a telephone number to which anybody who tests positive  
20 between now and then, including the jurors, can report the test  
21 result to Andy. The tests should be physically preserved  
22 because we will ask for them. And so we have a day without  
23 testimony today.

24 MS. HABBA: Your Honor, sorry. Will we find out  
25 today, do you know, if the juror tests positive? Obviously,

01MQcarF

1 I'm negative, but we don't know their testing results yet?

2 THE COURT: Andy will set up a number to call --

3 MS. HABBA: Okay.

4 THE COURT: -- to find out if we are proceeding  
5 tomorrow morning. That's been standard procedure ever since  
6 Covid broke out, and the court administration is quite  
7 experienced with it.

8 So, Andy, you will ensure you get the test result from  
9 Juror No. 3 by a time that would enable us to put up the answer  
10 to what happens tomorrow sufficiently early to be meaningful.

11 Anything else on that subject?

12 MS. KAPLAN: Your Honor, it's -- we don't know. It's  
13 a known unknown at this point, but if Juror No. 3 is still ill  
14 tomorrow, we would very much like to proceed. We don't want to  
15 lose this juror, and we're almost at the very end of the case.

16 THE COURT: I understand. So let's bring in the jury,  
17 and we will explain what's going on and send them off.

18 Bring in the jury.

19 (Jury present)

20 THE COURT: Good morning folks.

21 The reason for the delay in starting this morning is  
22 that the juror who occupies seat number 3 reported on his way  
23 to the courthouse that he was ill, and rather than risk him  
24 coming together and having contact with you before we know what  
25 the situation is, we sent him home, and he will Covid test

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1 today and report the results.

2 So we will not take testimony today. We will get the  
3 Covid test result. Two of the lawyers who -- or at least one  
4 of the lawyers, but possibly two, who had had a symptom or so  
5 over the weekend have been tested already this morning and have  
6 tested negative for Covid.

7 So we will take the day off. And before you leave the  
8 courthouse, Andy will advise you of the arrangements we have  
9 for you, first of all, to report if you exhibit symptoms or  
10 test positive for Covid and give you a time deadline for  
11 reporting, and then a telephone number to call to find out  
12 whether to come back tomorrow or on a subsequent occasion.

13 This Court functioned all the way through the worst of  
14 the Covid pandemic. We conducted over a hundred jury trials  
15 right through the lockdowns and everything else. Our  
16 administrative staff knows how to do this, and we have an  
17 epidemiologist consultant from a medical school who advises us  
18 how to handle these situations. So we have gotten through all  
19 of that. I'm sure we'll get through all of this too.

20 I thank you. You should go back out into the jury  
21 room. It may take time for your transportation to get  
22 arranged, but Andy has to make these other arrangements in any  
23 case. So enjoy your morning coffee and see you tomorrow, I  
24 hope.

25 (Jury not present)

01MQcarF

1 THE COURT: Please be seated folks. The other thing I  
2 want to announce is that the defense made a motion for a  
3 mistrial and other relief again late last week. That motion is  
4 going to be denied. There will be a written opinion in due  
5 course. It will be denied in all respects.

6 MS. HABBA: Hi, your Honor. Just on a separate issue?

7 THE COURT: Yes, Ms. Habba.

8 MS. HABBA: My client reminded me, and I am in trial  
9 mode, I apologize, so tomorrow is the New Hampshire primary,  
10 and he needs to be in New Hampshire. He was planning to  
11 testify. Clearly, he flew in last night to be here. I would  
12 just need his testimony to be Wednesday in light of the news  
13 about the juror today.

14 THE COURT: Ms. Kaplan?

15 MS. KAPLAN: Your Honor, we would again like to get  
16 this trial over. There's very short testimony from us left,  
17 and we just think we should finish tomorrow.

18 THE COURT: I'm not going to decide right now.  
19 Circumstances may result in your getting what you ask for and  
20 maybe not.

21 Okay.

22 MR. MADAIIO: Your Honor, there is one last thing.  
23 We'd like to make a Daubert motion based on Professor  
24 Humphreys' testimony on Thursday if this is the appropriate  
25 time?

01MQcarF

1 THE COURT: The appropriate time would have been  
2 before she testified.

3 MR. MADAIIO: Well, your Honor, the Court does have  
4 discretion to hear the Daubert motion after the expert's  
5 testimony as well.

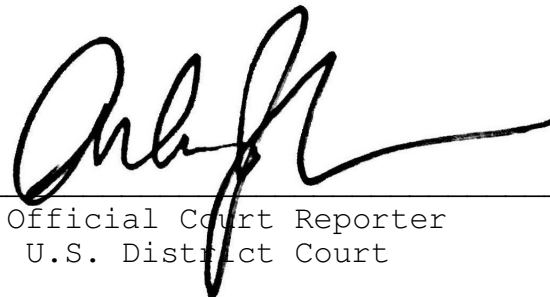
6 THE COURT: If you want to file a motion, you can file  
7 it. I'm not telling you I'm going to consider it as timely.

8 MR. MADAIIO: Understood, your Honor. We'll file it.

9 THE COURT: Okay. Thank you folks.

10 (Trial continued to January 23, 2024 at 9:30 a.m.)  
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17 I hereby certify that the foregoing is a true and  
18 accurate transcript, to the best of my skill and ability, from  
19 my stenographic notes.  
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Official Court Reporter  
U.S. District Court  
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